IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL FROM ORDER NO.213 OF 1996

Mahadeo Deoram Bodke .. Appellant.
(Orig.Deft.)

V/s.

Mrs.Pilloo Keki Sidhwa & Ors. .. Respondents.
(Orig.Plffs.)

AND

APPEAL FROM ORDER NO.214 OF 1996

Mahadeo Deoram Bodke .. Appellant.
(Orig. Plff.)

V/s.

Satyawan Madhukar Labdhe .. Respondent.
(Orig. Deft.)

Mr.Santosh Shetty i/b. M.P. Vashi for the Appellant.

Mr.J.J. Shah for Respondent Nos.7 and 8.

CORAM : A.S. OKA, J.

DATED : 5TH APRIL, 2005.

P.C. :

1. Heard Advocates appearing for the parties.

2. The Appeal from Order No.213 of 1996 is preferred for challenging the judgment and order dated January 30, 1996 passed in Notice of Motion No.6837 of 1995 in S.C.Suit No.7323 of 1995. The Appellant in Appeal from Order No.213 of 1996 is the Defendant in S.C.Suit No.7323 of 1995. For the detailed reasons recorded in separate order passed on the same day by the learned Trial Judge in Notice of Motion No.2709 of 1995 in Suit No.6080 of 1995, the

learned Trial Judge allowed the Notice of Motion No.6837 of 1995 in terms of prayer clause (a). Prayer clause (a) of the said Notice of Motion reads thus :

> "(a) Pending the hearing and final disposal of the suit, by an order and Injunction of this Honourable Court restraining the Defendant, his agents and servants and all persons claiming through or under him from in any manner disturbing or interfering with the plaintiff's possession and enjoyment of the suit property and from obstructing and/or preventing the plaintiffs, their agents, and servants from carrying out the development work of the suit property i.e. property admeasuring about 1209.4 sq.meters situated at Survey No.202-E, House No.E, C.T.S.No.468, S.V. Road, Andheri (West), Bombay 400 058 ;"

3. The Appeal from Order No.214 of 1996 is preferred for challenging the judgment and order dated January 30, 1996 passed in Notice of Motion No.2709 of 1995 in L.C. Suit No.3080 of 1995. The said suit was filed by the Appellant. By the judgment and order which is impugned in Appeal from Order No.214 of 1996, the learned Trial Judge dismissed the said Notice of Motion taken out by the Appellant.

4. Civil Application No.1131 of 1996 was filed by the Appellant in Appeal from Order No.214 of 1996. At the time of admission of the appeal, this Court disposed of the Civil Application No.1131 of 1996 by

passing the following order :

> "Heard both sides. C.A. allowed partly. Both parties shall maintain status quo of the disputed structure shown in D.L.R's sketch dated 27.6.95 till disposal of this appeal.
>
> C.C. expedited."

5. In view of the said order, this Court did not grant any interim relief in Civil Application No.1127 of 1996 taken out in Appeal from Order No.213 of 1996.

6. It is not in dispute between the parties that the aforesaid order dated February 22, 1996 passed in Civil Application No.1131 of 1996 is operating till today.

7. Both the Appealsfrom Order are preferred for challenging the orders passed on the Notices of Motion taken out for interim reliefs. In the Appeals preferred against the said discretionary orders, this Court has passed the aforesaid interim order dated February 22, 1996 which is operating for last more than 9 years. Both the suits are pending in the Trial Court.

8. In view of this position, after long lapse of 9 years, the interim arrangement which was prevailing between the parties cannot be varied in absence of

any change of circumstances shown by either parties.

9. Hence, these Appeal from Orders are disposed of by directing that the order dated February 22, 1996 passed by this Court in Civil Application No.1131 of 1996 in Appeal from Order No.214 of 1996 will continue to operate as interim order during the pendency of both the suits pending in the Trial Court.

10. The learned Trial Judge will decide both the suits without being influenced by the tentative findings recorded in the impugned judgments and orders. Liberty to the parties to apply for expeditious hearing of the suit.

11. Parties and the concerned Court to act on authenticated copy of this order.

(A.S. OKA, J.)